

A-6534
Variance Request

Maintain a freestanding (pizza) oven that was constructed in the south (side) yard and that encroaches one foot, four inches (1' - 4") into the side yard setback.

Mr. Dean D'Angelo &
Ms. Tracey D'Angelo
5810 Connecticut Avenue

CHEVY CHASE VILLAGE
BOARD OF MANAGERS
MAY 12, 2014 MEETING

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 5/8/2014
SUBJECT: HEARING OF APPEAL CASE NO. A-6534 VARIANCE REQUEST
MS. TRACEY D'ANGELO AND MR. DEAN D'ANGELO, 5810 CONNECTICUT AVENUE
MAINTAIN A FREESTANDING (PIZZA) OVEN THAT WAS CONSTRUCTED IN THE SOUTH (SIDE) YARD
AND THAT ENCROACHES ONE FOOT, FOUR INCHES (1'- 4") INTO THE SIDE YARD SETBACK.

CASE SYNOPSIS: The Applicants obtained a permit # 6541, to construct a freestanding pizza oven. The oven was to be located seven (7) feet from the south (side) property line. During routine code enforcement patrol, staff observed that the oven had been constructed closer to the property line than depicted on the plan and it encroached one foot, four inches (1'-4") into the side yard setback. The Applicants were issued a citation and are requesting the variance in order to maintain the oven where it was constructed. They have supplied a letter of support from the abutting neighbor to the south.

NOTICE REQUIREMENTS: Abutting Owners; Public Notice

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code Sec. 8-16 (g) states:

No part of any building, structure or play equipment shall be erected or maintained within seven (7) feet of the side or rear lot lines, nor within ten (10) feet of the nearest adjacent dwelling.

APPLICABLE COVENANTS:

"[No] part of any house or any structure appurtenant thereto shall be erected or maintained within five (5) feet of the side lines of the lot on which it is to stand, nor within ten (10) feet of the nearest adjacent house..."

FACTUAL AND BACKGROUND INFORMATION:

The approved plan depicted the pizza oven as being located seven (7) feet from the south (side) property line.



Figure 1: View of the pizza oven, looking south.

A citation, which has been paid, was issued to the Applicants for violation of Code section 8-9 (Modification of approved plan), now Code section 8-6(d), which states:

No person or persons shall erase, modify or alter any plans or specifications after they have been approved and a permit issued thereon. If during the progress of work it is desired to deviate materially from the approved plans or specifications, notice of such intent shall be given in writing to the Village Manager, and his/her written approval shall be obtained before such amendment is made. No person or persons shall proceed with any activity requiring a village building permit except in accordance with the approved plans and specifications, and any amendments approved by the Village Manager.

The Applicants have also added four stone columns to the project, which are compliant with Village regulations for setbacks for accessory structures and are not part of this request.

No tree removals were requested related to the work and no trees have been damaged by the work.

To date one letter has been received from the abutting neighbor, Ms. Kerry Crist and Mr. Jay Angoff, of 5808 Connecticut Avenue in support of the request. There has been no correspondence received in opposition to the request.

The Applicants previously had a variance and special permit granted to maintain two air conditioners that had been located in the front yard of the property; a new unit located in the front (Connecticut Avenue) yard and a replacement unit located in the front (West Irving Street) yard.

Applicable Fees: Building Permit Application: previously assessed \$30; Variance Application Fee: \$300.

RELEVANT PRECEDENTS:

There are numerous precedents for variances granted for encroachments into side yard setbacks when no covenant setback is involved, however most are for encroachments that are attached to and part of the main dwelling. This case is slightly different in that the request regards an accessory structure. Also, this case is retroactive in nature- the Applicants are requesting permission to maintain an encroachment that occurred when the approved plans were modified without permission. The most direct precedent is from a case in January 2012 wherein Mr. & Mrs. Tony Everett of 3 Newlands Street were **granted a variance to construct** an above-grade water feature, a portion of which would encroach six (6) feet into the seven (7) foot rear yard setback. A portion of the water feature had been constructed, and work was stopped until the case was resolved. (In that case no plan had been obtained whereas in this case an approved plan was modified without permission.)

FINDINGS REQUIRED:

1. The proposed variance is required because special conditions exist whereby the enforcement of the requirements of the Village Building Code would result in an unwarranted hardship and injustice to the owner.
2. The proposed variance will most nearly accomplish the intent and purpose of the requirements of the Village Building Code; and
3. Except for variances from the requirements of Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [Public Rights-of-Way] of the Village Regulations, the structure authorized by the proposed variance would not violate any covenant applicable to the property.

Draft Motion

I move to APPROVE/DENY the variance request in Case A-6534 on the basis that the evidence presented, including the Staff Report, demonstrates that the applicable requirements for approval of the variance HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the variance request.

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 12th day of May, 2014 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6534
MR. DEAN D'ANGELO &
MS. TRACEY D'ANGELO
5810 CONNECTICUT AVENUE
CHEVY CHASE, MARYLAND 20815**

The applicants seek a variance from the Board of Managers pursuant to Sec. 8-9 of the Chevy Chase Village Building Code to maintain a freestanding (pizza) oven that was constructed in the south (side) yard and that encroaches one foot, four inches (1'- 4") into the side yard setback.

The Chevy Chase Village Code Sec. 8-16 (g) states:

No part of any building or structure shall be erected or maintained within seven (7) feet of the side or rear lot lines, nor within ten (10) feet of the nearest adjacent dwelling.

Additional information regarding this case may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed and emailed (where possible) to abutting and confronting property owners on the 1st day of May, 2014.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**

MAILING LIST FOR APPEAL A-6534

MR. & MRS. DEAN D'ANGELO
5810 CONNECTICUT AVENUE
CHEVY CHASE, MD 20815

Adjoining and confronting property owners	
✓ Mr. & Mrs. Joel Winnik Or Current Resident 5804 Connecticut Avenue Chevy Chase, MD 20815	Mr. & Mrs. Temple Grassi Or Current Resident 5900 Connecticut Avenue Chevy Chase, MD 20815
✓ Ms. Kerry Crist & Mr. Jay Angoff Or Current Resident 5808 Connecticut Avenue Chevy Chase, MD 20815	Mr. & Mrs. John J. Cafaro Or Current Resident 9 Chevy Chase Circle Chevy Chase, MD 20815
✓ Mr. Thomas L. Howard Or Current Resident 4 West Irving Street Chevy Chase, MD 20815	Mr. & Mrs. Lansing B. Lee, III Or Current Resident 1 East Irving Street Chevy Chase, MD 20815
Mr. & Mrs. Thomas Toch Or Current Resident 1 West Irving Street Chevy Chase, MD 20815	

ES

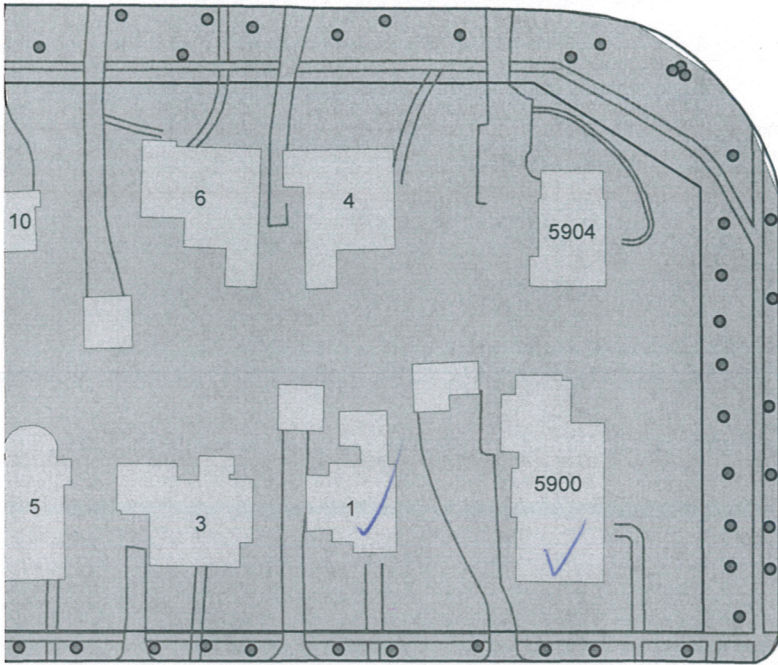
I hereby certify that a public notice was mailed (and emailed where possible) to the
aforementioned property owners on the 1st day of May, 2014.

Ellen Sands
Permitting and Code Enforcement Coordinator
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815

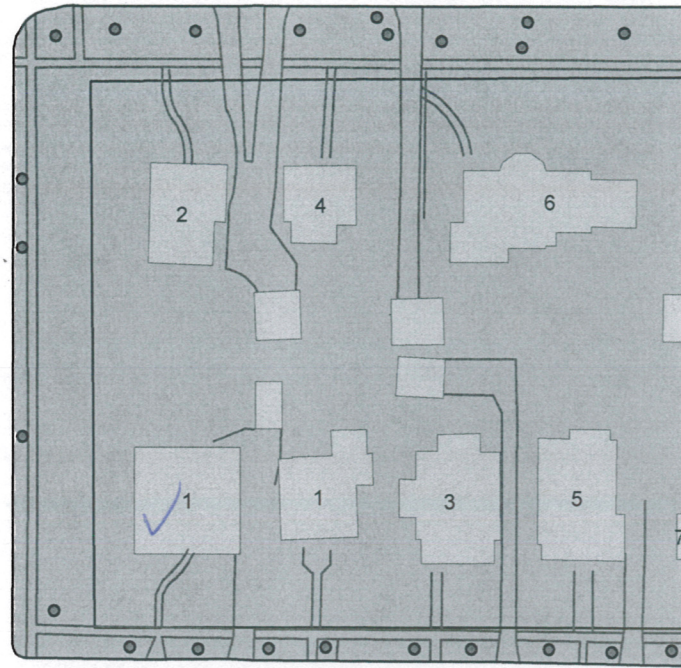
W. KIRKE ST.

KIRKE ST.

E. KIRKE ST.



W. IRVING ST.



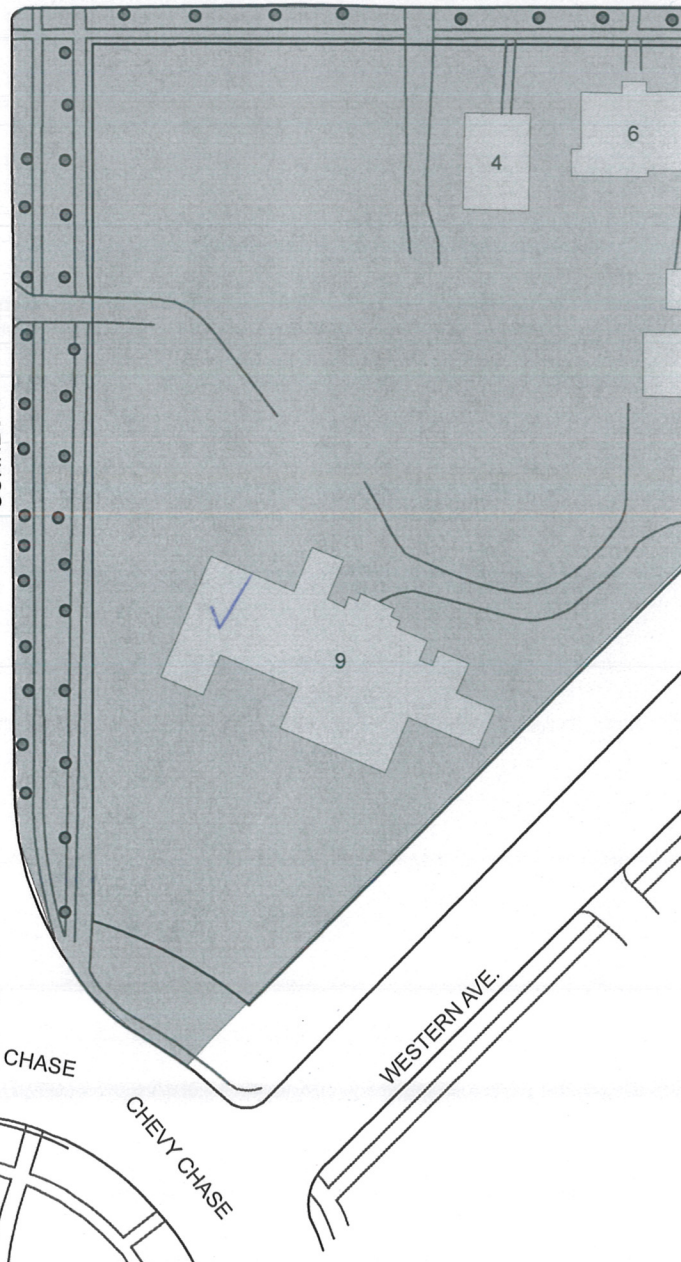
E. IRVING ST.



MAGNOLIA PKWY.

CONNECTICUT AVE.

CONNECTICUT AVE.



CHEVY CHASE

CHEVY CHASE

WESTERN AVE.



May 1, 2014

Mr. & Mrs. Dean D'Angelo
5810 Connecticut Avenue
Chevy Chase, MD 20815

Dear Mr. & Mrs. D'Angelo:

Please note that your request for a variance to maintain the pizza oven that was constructed and that encroaches into the south side yard setback at your property is scheduled before the Board of Managers on Monday, May 12, 2014 at 7:30 p.m.

Either you or another representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of the request.

For your convenience, enclosed please find copies of the Public Hearing Notices and mailing list. Please contact the Village office in advance if you are unable to attend.

Sincerely,

Ellen Sands
Permitting and Code Enforcement
Chevy Chase Village

Enclosures

CHEVY CHASE VILLAGE
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
Phone (301) 654-7300
Fax (301) 907-9721
ccv@montgomerycountymd.gov
www.chevy Chase Villagemd.gov

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VILLAGE MANAGER
SHANA R. DAVIS-COOK

LEGAL COUNSEL
SUTLEEN M. FERGUSON

**Chevy Chase Village
Building Permit Application**

Permit No: A-6534

Property Address:

5810 Connecticut Avenue

Resident Name: Tracey & DEAN D'ANGELO

Daytime telephone: 301 941 8007

Cell phone: 704 258 7742

After-hours telephone: same

E-mail: hmd624@comcast.net

Project Description:

Maintain location of pizza oven that encroaches
1'4" into the side yard setback.

☐ Check here if the construction will require the demolition of over fifty (50) percent of any existing structure.

Primary Contact for Project:

☒ Resident

☐ Architect

☐ Project Manager

☐ Contractor*

*MHIC/MD Contractor's License No. (required):

Information for Primary Contact for Project (if different from property owner):

Name:

Work telephone:

After-hours telephone:

Cell phone:

E-mail:

Will the residence be occupied during the construction project?

☒ Yes

☐ No

If no, provide contact information for the party responsible for the construction site (if different from above):

Name:

Address:

Work telephone:

After-hours telephone:

Cell phone:

E-mail:

Parking Compliance:

Is adequate on-site parking available for the construction crews?

☒ Yes

☐ No

If no, please attach a parking plan which minimizes inconvenience to neighboring residents, and indicate if the property is in a permit parking area.

Will road closings be required due to deliveries, equipment or other reasons?

☐ Yes

☒ No

Building Permit Filing Requirements:
Application will not be reviewed until the application is complete

- ☐ Copy of stamped drawings approved by Montgomery County Department of Permitting Services (DPS) and the Historic Preservation Commission (HPC), if required. Every page of drawings must be clearly stamped.
- ☐ This application form, signed by resident.
- ☐ Boundary Survey
- ☐ Site Plan (see: Village Site Plan Checklist to ensure completeness)
- ☐ Building plans and specifications
- ☐ Tree Preservation Plan requested of Village arborist (see: Village Tree Inspection Request form). All required tree protections must be fully installed before any work begins.
- ☐ Filing Fee (due at time of application). Fees schedule is listed in Chapter 6 of the Village Code.
- ☐ Damage deposit or performance bond (due when Building Permit is issued). Amount of required deposit or bond will be set by Village Manager.

Once this permit application is complete, the Village Manager will review the application and accompanying documents and, under most circumstances, act on the application within 5 to 10 working days.

If the Montgomery County permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed.

No signs advertising the architect, contractor, or any other service provider may be posted on the work site.

I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Montgomery County Zoning Code, the Village Code including Urban Forest code, and any covenants and easements on the subject property.

Applicant's Signature: Tracy D. Angelo **Date:** 4/5/14

To be completed by Village staff:

Is this property within the historic district? Yes ☒ No ☐ Staff Initials: GB
Date application filed with Village: 4/18/14 Date permit issued: _____ Expiration date: _____

For Use By Village Manager	Application approved with the following conditions:
<div style="display: flex; align-items: center;"> <div style="text-align: center; margin-right: 10px;"> DENIED <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">APR 17 2014</div> Chevy Chase Village Manager </div> <div> Application denied for the following reasons: <i>Donna O'Connell</i> <i>The oven extends into the</i> <i>South (Side) yard setback.</i> </div> </div>	

Filing Fees (due when application submitted)	Checks Payable to: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<i>previously assessed</i> Permit Application Fee: \$ _____ (see Permit Fee Worksheet) <input type="checkbox"/> \$50.00 (if construction is in the Public Right-of-way)	
Tree Preservation Plan Fee: <input type="checkbox"/> \$250.00 <input type="checkbox"/> Not required for this project.	
TOTAL Fees: <i>0</i>	
	Date: <i>4/18/14</i> Staff Signature: <i>[Signature]</i>
Damage Deposit/Performance Bond (due when permit is issued)	Checks Payable to: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<input type="checkbox"/> \$ _____ <input checked="" type="checkbox"/> Waived by Village Manager	Date: <i>4/30/2014</i> Village Manager Signature: <i>[Signature]</i>
Cost of damage to R-O-W: (calculated at close-out) Amount of refund:	Date: Village Manager Signature:

Chevy Chase Village

Application for a Variance

A variance is permission granted to a landowner to depart from the specific requirements of the Village zoning ordinance and allows a landowner to use land differently than specified in the ordinance. The variance is a written authorization from the Board of Managers permitting construction in a manner not otherwise allowed by the Village Code.

Subject Property: 5810 Connecticut Avenue	
Describe the Proposed Project: maintain location of Pizza oven that encroaches 1'4" into the side yard setback.	
Applicant Name(s) (List all property owners): Tracey & Dean D'Angelo	
Daytime telephone: 301 941 8007	Cell: 704 258-7742
E-mail: tmd624@comcast.net	
Address (if different from property address):	
For Village staff use:	
Date this form received: 4/17/14	Variance No: A-6534

Filing Requirements:

Application will not be accepted or reviewed until the application is complete

- ☒ Completed Chevy Chase Village Application for a Variance (this form)
- ☒ Completed Chevy Chase Village Building Permit Application
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☒ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☒ Copy of Covenants applicable to the property except for variances from Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code.
- ☒ Variance fee (See fee schedule listed in Chapter 6 of the Village Code).

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this variance request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: Tracey D'Angelo

Date: 4/17/2014

Applicant's Signature: Dean D'Angelo

Date: 4/17/2014

Describe the basis for the variance request (attach additional pages as needed).

Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village:

please see attached letter

Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

please see attached letter

Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

see attached letter

In exercising its powers in connection with a variance request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

Variance Filing Fee	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<i>Per Village Code Sec. 6-2(a)(24):</i> <input checked="" type="checkbox"/> \$300.00 for new construction. <input type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. <input type="checkbox"/> Other: \$ _____	Date Paid: <i>4/18/14</i> Staff Signature: <i>[Signature]</i>
Fee Paid: <i>\$300.00</i>	Approved to Issue Building Permit per Board Decision Signed by the Board Secretary on: Date: _____ Signature: _____ Village Manager

Chevy Chase Village
Board of Managers
5906 Connecticut Avenue
Chevy Chase, MD 20815

April 15, 2014

Construction of the pizza oven took place during the winter, under a tarp erected to protect the project from the elements. When the workers unpacked the pizza oven, its finished circumference was larger than initially anticipated. The workers maintained the front face position of the oven without realizing that they were encroaching into the side yard setback. Because of the tent and the unusually snowy conditions this winter, it was impossible to access the area and determine that the setback restrictions had been violated. We did not realize what had happened until Ms. Sands reviewed the site.

Because this is a masonry project, moving it would be an extraordinary hardship, both financially and physically. Our contractor estimates that moving the pizza oven would add approximately 3 months of construction time to the project. We feel that this poses significant hardship to our family and to our neighbors, who have so kindly put up with the disruption created by this project since last November.

We have spoken to our neighbors affected by this encroachment. They cannot see the project from their property since there is a large wall between the two yards and it abuts their driveway, not their outdoor living space. After reviewing the situation, they support us maintaining the oven in its current position. (See attached letter)

We hope that the Board will consider that this encroachment was most unintentionally done, and that we have sincerely tried to meet all requirements of the Village and the County with respect to this project and other work we have performed on our home. Since this project is not visible from our neighbor's yard or from the street and has no acoustical impact, we hope that you will concur that it does not have an adverse impact on the neighborhood.

We very much appreciate your consideration in this matter.

Sincerely,


Tracey & Dean D'Angelo

Chey Chase Village Manager

Sept 25, 2013

stiff
stiff

Drains down Driveway

STONE
TERRACE

STONE TEKLACE

321-01

high

constructed
5' - 8" from
South R.
encroaches
1'-4" into
setback

Adjacent property is higher

EXISTING Low wall
VEG 3 EDS

Previously paved
proposed Lawn.
L A W N

THE

CON. AVE

5th P/n

Drainage Info.

Chevy Chase Village
Board of Managers
5906 Connecticut Avenue
Chevy Chase, MD 20815

April 15, 2014

Dear Members of the Board,

We understand that our neighbors, Tracey and Dean D'Angelo of 5810 Connecticut Avenue, have inadvertently constructed their pizza oven 1'4" closer to the property line than Village covenants allow. We also understand that they are applying to the Board for a variance in this matter. We would like the Board to know that we are not adversely affected by the current location of the pizza oven and support their variance request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kerry Crist and Jay Angoff". The signature is written in dark ink and is positioned above the printed names of the signatories.

Kerry Crist and Jay Angoff
5808 Connecticut Avenue



April 3, 2014

Mr. & Mrs. Dean D'Angelo
5810 Connecticut Avenue
Chevy Chase, MD 20815

Dear Mr. & Mrs. D'Angelo:

While on routine Code Enforcement patrol recently, I observed that modifications had been made to the approved plans for the work at your property. Per our Village regulations, any modification to the approved plans has to be submitted to and approved by the Village Manager:

Sec. 8-9. Modification of approved plan.

No person or persons shall erase, modify or alter any plan or specifications after it has been submitted and a permit issued thereon. If during the progress of work it is desired to deviate materially from the approved plan or specifications, notice of such intent shall be given in writing to the Village Manager, and his written approval thereof and assent thereto shall be obtained before such deviation or alteration is made. No person or persons shall proceed with the building of any structure, material alteration or addition, except in accordance with the plans and specifications approved therefore, or in accordance with deviations or alterations approved by the Village Manager.

The pizza oven and the stone base within which it is installed, which is considered a structure for the purposes of the Village Code, has been constructed five feet, eight inches (5'-8") from the south property line. The approved plan depicts the structure as being located seven (7) feet from the south property line. Per the Village Code:

Sec. 8-17. Residential building construction prohibitions.

(g) No part of any building, structure or play equipment shall be erected or maintained within seven (7) feet of the side or rear lot lines, nor within ten (10) feet of the nearest adjacent dwelling.

This structure as currently located encroaches one foot, four inches (1'-4") into the required seven (7) foot side (south) yard setback.

Additionally, stone columns were constructed in the south (side) yard. These columns were not depicted on the approved plan and, per Section 8-9 of the Village Code (see above) required approval prior to construction. Per Section 8-9 cited above, you must submit a written request of your intent and obtain approval from the Village Manager in order to maintain the columns.

CHEVY CHASE VILLAGE

5906 Connecticut Avenue
Chevy Chase, Maryland 20815

Phone (301) 654-7300

Fax (301) 907-9721

ccv@montgomerycountymd.gov
www.chevychasevillagemd.gov

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LEGAL COUNSEL
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